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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/611,454
Filing Date: June 30, 2003
Appellant(s): GRAY ET AL.

Mr. Bruce E. Stuckman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 October 2008 appealing from the Office action mailed 2 May 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2005/0086687	Omoigui	4-2005
US 2003/0163828	Agnihotri et al.	8-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 5-9, 12-16, and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Omoigui (US 2005/0086687).

Claim 1: Omoigui discloses a method comprising:

determining at a data center (at encoder/server 14 [Fig 1]) whether to inform a user of an interactive television service of alternate content (informing a user of events of interest in alternate programs [para 0098]), the user connected with the data center via a network [Fig 1];

responsive to determining to inform the user of the alternate content, generating a hot key signal indicating availability of the alternate content (sending a notification of the alternate content 608 [para 0098]); and

inserting the hot key signal into a content signal transmitted to the user from the head-end and data center via the network (sending the notification from the encoder/server [para 0037]);

wherein the determining is independent of any request by the user for the alternate content [para 0097], but based at least in part on a search for alternate content (monitoring of alternate content 604 [para 0098]) having subject matter that is related to subject matter of content being viewed by the user when the search is conducted (related as determined by correlating step [para 0098], which uses viewing habits data that may be updated in parallel with viewing habits monitoring [para 0098], i.e. when the content is being viewed by the user).

Claim 2: Omoigui further discloses the method of claim 1, wherein determining at the data center whether to inform the user of the interactive television service of alternate content is based on results of a search of programming information (monitoring alternate programs for events of interest [para 00908]).

Claim 5: Omoigui further discloses the method of claim 1, wherein determining at the data center whether to inform the user of the interactive television service of alternate content is based on information received during generation of programming information (event information monitored during generation of a live content database [para 0071]).

Claim 6: Omoigui further discloses the method of claim 1, wherein the hot key signal comprises an Internet Protocol (IP) data packet, the Internet Protocol data packet having a header portion and a body portion, the body portion having a data field indicating a location of the available content (content which includes video and other data i.e. notifications [0029] can be multicast over the Internet [0031] which implies using IP packets, and a location of the alternate content is included so the user can switch to the other presentation [0009]).

Claim 7: Omoigui further discloses the method of claim 6, wherein the Internet Protocol data packet is transmitted from the data center as an Internet Protocol multicast to the user via the network (content is multicast over the Internet [0031]).

Claim 8: Omoigui discloses a data center comprising:

a hot key generation portion to determine whether to inform a user of an interactive television service of alternate content (an encoder/server determines where to send alternate content notifications [0036]), the user connected with the data center via a network [Fig 1] and responsive to determining to inform the user of the alternate content, generating a hot key signal indicating availability of the alternate content (a notification is sent after the determination [0037]);

a multiplexor system to insert the hot key signal into a content signal (the video and other data are transmitted together [0029]); and

a transport system to transmit the content signal and the hot key signal to the user from the data center via the network [Fig 1];

wherein the hot key qeneration portion determines whether to inform the user of alternate content independent of any request by the user for the alternate content [para 0097], but based at least in part on a search for alternate content (monitoring of alternate content 604 [para 0098]) having subject matter that is related to subject matter of content being viewed by the user when the search is conducted (related as determined by correlating step [para 0098], which uses viewing habits data that may be updated in parallel with viewing habits monitoring [para 0098], i.e. when the content is being viewed by the user).

Claims 9 and 12-14 are rejected under the same grounds as claims 2 and 5-7, respectively.

Claim 15: Omoigui discloses a machine-readable medium having stored thereon a series of instructions (a dedicated media server or a general purpose computer [0054] imply processors with machine-readable media having stored instructions), the instructions, when executed by a processor, cause the processor to:

determine at a data center whether to inform a user of an interactive television service of alternate content (an encoder/server determines where to

send alternate content notifications [0036]), the user connected with the data center via a network [Fig 1];

responsive to determining to inform the user of the alternate content, generate a hot key signal indicating availability of the alternate content (a notification is sent after the determination [0037]); and

insert the hot key signal into a content signal transmitted to the user from the data center via the network (encoder/server sends notifications to client devices [0037]),

wherein the instructions cause the processor to determine whether to inform the user of alternate content independent of any request by the user for the alternate content [para 0097], but based at least in part on a search for alternate content (monitoring of alternate content 604 [para 0098]) having subject matter related to subject matter of content being viewed by the user when the search is conducted (related as determined by correlating step [para 0098], which uses viewing habits data that may be updated in parallel with viewing habits monitoring [para 0098], i.e. when the content is being viewed by the user).

Claims 16 and 19-21 are rejected under the same grounds as claims 2 and 5-7, respectively.

Claims 3, 4, 10, 11, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Omoigui (US 2005/0086687) in view of Agnihotri (US 2003/0163828).

Claim 3: Omoigui does not further disclose the method of claim 2, wherein determining at the data center whether to inform the user of the interactive television service of alternate content further comprises performing a search of one or more Internet web sites (whether the monitored program information [para 0098] i.e. event data is on a website or not is not specified).

Agnihotri discloses event data for a broadcast program that is available on a website [para 0032] found via a search [para 0023].

It would have been obvious to have modified the event data source in the method of Omoigui to have been a website as disclosed by Agnihotri for the purpose of providing event metadata through the world wide web.

Claim 4: Omoigui in view of Agnihotri further discloses the method of claim 3, wherein performing the search of one or more web sites comprises using the results of the search of programming information (using event data to determine events of interest [Omoigui para 0096]).

Claims 10 and 11 are rejected under the same grounds as claims 3 and 4 respectively.

Claims 17 and 18 are rejected under the same grounds as claims 3 and 4 respectively.

(10) Response to Argument

The rejections should be upheld for the following reasons:

Appellant's invention is directed to informing a user of alternate television content that is related by subject matter to content that is viewed while a search for alternate conduct is conducted. From independent claim 1:

> wherein the determining is independent of any request by the user for the alternate content, but based at least in part on a search for alternate content having subject matter that is related to subject matter of content being viewed by the user when the search is conducted.

The claimed searching for a particular alternate content is described in page 17, lines 1-14 of Appellant's specification, as cited by Appellant's Summary of the Claimed Subject Matter. Brief, pg. 2.

The claim requires that the search for alternate content be conducted when the user is viewing a particular content, and that the currently-viewed content and the alternate content be related by subject matter. But the specification only describes searching for alternate content, and fails to specifically describe that a user is viewing a particular content at the same time as the search is conducted. The data center conducting the search has no capability of monitoring what the user is watching while the search is conducted. A user may inherently be viewing any content when a search

is conducted at a data center, but the extent of the relation of the subject matter of the viewed content to that of the searched content is unspecified.

Accordingly, the claimed limitation whereby the subject matters are “related to” each other was interpreted broadly as will be described below. Further, “subject matter of content being viewed” was interpreted as subject matter of a program as a whole, since an entire football game is one subject matter following Appellant's specification. Therefore, the time period in which a subject matter is "being viewed" can be at least the length of a football game.

Omoigui’s currently viewed programs are related by subject matter to alternate programs in at least two ways. Omoigui’s alternate programs are detected in step 606 of Figure 12 by continuously monitoring electronic presentations in step 604. The monitoring and detection of alternate content events is based on correlations between viewing time and specific events, which are updated in step 610 “at any time and in parallel with” the other steps. Para. [0098]. last sentence. By the example in Figures 13-15, a monitoring step may observe that a Kosovo event is preferred over a 3rd down/4th down event during the time period of Figure 13. The viewing habits database could then immediately be updated, since updates to the database may occur at any time. Later, during the time period of Figure 15, if a Kosovo program was detected on another channel besides the displayed channels, the event detection step 606 could detect the program and the viewer would be notified that a program with a higher priority event was on, since a Kosovo subject matter is ranked more highly than a football program’s 4th down event by Figure 13, and the user is viewing a 4th down event in the later Figure

15 time period. The subject matters of the alternate content (Kosovo) and the currently viewed content (football/4th down) are thus firstly "related to" each other by their comparative rankings.

Further, the programs in Figure 15 are the same programs as in Figure 13. The events of Figure 13 may be updated and correlated to become viewing habits data, which are used to search for alternate programs during a later Figure 15 time period. Recommended alternate content is based on past viewing habits by paragraph [0097], and past viewing habits includes programs that are currently being viewed by Figures 13-15, so there is a second relation between programs that are currently viewed and alternate programs.

Appellant's Brief firstly argues that Omoigui does not teach the claimed limitations under consideration. Appellant particularly argues that Omoigui's disclosure does not support "monitoring subject matter while it is still being viewed." Brief, pgs. 6, 7. However, this argument is moot, as Appellant's claims do not monitor subject matter while it is still being viewed; the claims only require a relation between subject matter that is being viewed while a search is conducted and subject matter of alternate content. Appellant's specification provides no support for monitoring subject matter that is being viewed. Further, Omoigui's disclosure of performing steps in parallel does imply that a database may be updated while a subject matter is being viewed, in contrast to Appellant's statements; Omoigui's Figure 12 illustrates a looping method that continuously updates a viewing habits database and monitors programs based on the viewing habits. Therefore, while Omoigui's updating step may take some discrete

amount of time, the claimed limitation "content being viewed" does not require an instantaneous relation; Appellant's specification's example of a football game subject matter would be several hours long, and if Omoigui updated the viewing habits database even once during that lengthy time period, it would meet the limitations. Since Omoigui may update correlations "at any time and in parallel" with the other continuous steps of the process of Figure 12, the limitations are met.

Appellant secondly argues that Omoigui cannot search for alternate content based on subject matter of content being viewed by the user when the search is conducted. Brief, pg. 7. Again, this argument is moot, as Appellant's claims do not require that the search is based on subject matter of content being viewed by the user when the search is conducted; the claims only require that the alternate subject matters are related to content being viewed by the user when the search is conducted. The argument is further unpersuasive in view of the previous analysis. Appellant goes on to mischaracterize Omoigui's Figures 13-15, claiming that "time passes from left to right on each graph." Brief, pg. 9. Paragraph [0099] makes clear that each graph is a separate time frame and the user of Omoigui is watching the three channels simultaneously. Time changes between the figures, not inside them. Accordingly, Appellant's conclusions based on Figures 13-15 are inaccurate and unpersuasive.

Appellant finally cites Omoigui's paragraph [0100], claiming that Omoigui's updating step occurs after patterns are identified (in the example, after the time period of Figure 15). However, this paragraph does not contradict the rejection. As the paragraph states, the correlation may be made so that various programs being watched

may be further monitored and the user may be notified when alternate subject matter is detected. Specifically, while the paragraph describes an embodiment that waits until after the time period of Figure 15 to update the database in step 610, this embodiment is not limiting, since an update may occur “at any time” by paragraph [0098]. Further, even in the described embodiment where an update does not occur until after the Figure 15 time period, Omoigui does not indicate that the programs are then over. Presumably, a football game takes longer than the three plays illustrated in Figures 13-15, and hence the monitoring step would take the pattern described in paragraph [0100] and apply it to future plays in the football game. Since the football game as a whole is one subject matter by Appellant's specification, the subject matter would still be “currently viewed” after the specific time periods of Figures 13-15.

Accordingly, all of Appellant’s arguments are unpersuasive, and the rejections should be upheld.

The Examiner’s Answer has addressed Appellant’s arguments for patentability. Any further arguments regarding other elements or limitations not specifically argued that the appellant could have made are not being addressed for consideration by the panel. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue needs further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

BAI

Conferees:

Bennett Ingvoldstad

/Bennett Ingvoldstad/

Examiner, Art Unit 2427

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421